



CITY OF DANBURY

155 DEER HILL AVENUE
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ZONING COMMISSION
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MINUTES SEPTEMBER 13, 2005

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The meeting was called to order by Chairman Jack Knapp Jr. at 7:35 PM

Present were Theresa Buzaid, Theodore Haddad Jr., Patrick Johnston, Richard P. Jowdy, Jack Knapp Jr., and Alternates Jean Anderson, Ted Farah (arrived at 7:48 PM) and Helen Hoffstaetter. Also present was Planning Director Dennis Elpern.

Absent were Christine Cuhsnick, Donald Kennedy, Joseph Mooney, and Lenny Silva.

Chairman Knapp asked Ms. Hoffstaetter to take Mr. Kennedy's place, Mrs. Anderson to take Mrs. Cuhsnick's place and Mr. Farah to take Dr. Mooney's place for the items on tonight's agenda. Chairman Knapp then led the Commission in the Pledge of Allegiance.

Mr. Johnston made a motion to accept the minutes of July 26, 2005. The motion was seconded by Ms. Hoffstaetter and passed unanimously.

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PUBLIC HEARING:

7:30 PM – Petition of Lariviere Holdings LLC, 57, 59, 61 & 63 Kenosia Ave. (#F17003, #F17004, #F17005 & #F17006) for Change of Zone from IL-40 to CG-20.

Mr. Johnston read the legal notice regarding this petition. Chairman Knapp read the Planning Department Staff Report dated August 17, 2005. Mr. Johnston read the Planning Commission recommendation, which was negative and Chairman Knapp read the comments from the City Traffic Engineer.

Attorney Camille DeGalan spoke in favor this petition. She submitted a package containing the staff reports and minutes for the following zone changes that were granted previously by the Zoning Commission:

- 1981 Wilmorite petition for Mall
- 1987 Tisano petition for 20-30 Backus Ave
- 1988 Valluzzo petition for the corner of Sugar Hollow/Backus Ave.
- 1992 Guida/Marcus Dairy petition for Sugar Hollow Rd.
- 1993 City petition for Olive Garden/Red Lobster parcels on Backus Ave.

All of these changes were from IL-40 to CG-20 and were for properties in the immediate area of the subject parcels. She said the subject parcels are a relatively small area totaling 4.6 acres. Currently, three of the parcels have residential dwellings on them and the fourth on the corner is a dwelling but is used for business. She said the applicant owns all of the subject parcels. She described the surrounding uses and said the overwhelming commercial nature of the property is

reason they feel this should be changed. She said she is aware that this could be a circular argument that there is a boundary and it should not be changed. But, given the small size of these parcels, they are better suited to CG-20 than IL-40. None of the lots included meet the IL-40 lot area minimum. She asked that they look at the parcels themselves, not just on the map. These properties are singularly unacceptable for industrial development. Also there are wetlands which will limit the development. Even with the amount of development that has taken place since the Mall opened, no one has ever tried to buy these parcels from the applicant because it would be cost prohibitive to develop these as industrial. Regarding traffic there are uses in the industrial zone that generate as much if not more traffic. Although it is not relevant to this petition, their intended use is a restaurant. Also included in the package was copy of a portion of the Zoning Map, and the Land Development Plan Map and Environmental Protection Plan Map from the Plan of Conservation & Development (POCD). Attorney DeGalan said the POCD is an advisory document and the Commission is not bound by it. She asked that they consider the concrete reality of the property, not the abstract. She pointed out that there are nineteen uses in common between IL-40 and CG-20. There will never be a large scale industrial use on these parcels, but any development will generate more traffic due to what already exists in this area. This Commission has ignored the demarcation line in the past and the traffic issues will be the same no matter what the property is used for. This will only reduce the amount of IL-40 land by a minimal amount. Commercial is more appropriate for this area. These properties are currently non-conforming and this change will make them less non-conforming. Mr. Jowdy asked what percentage of the property are wetlands. Attorney DeGalan said she is not sure, she is aware that there is a brook on the property and she knows that they are required to maintain a 100 ft. area around it. She said it is shown on the zone change map. Chairman Knapp asked her to reiterate the use of the properties and she did. There were no other questions.

Chairman Knapp asked if there was anyone to speak in opposition to this petition and Dennis Elpern came forward.

Mr. Elpern said although the presentation was somewhat disjointed, he will address it. Some of the information presented regarding previous zone changes is not relevant to this matter. It all comes down to "just because you do it for one, does not mean you should do it again". This is an example of this and you can bet that if this is approved all the way up Kenosia Ave to the Mill Plain Rd. intersection will be coming in for zone changes. Commercial traffic contributes more traffic throughout the day as well as on the weekends. Industrial zoning contributes less traffic at all times. He explained that the City has not yet secured funds for the improvements that have been proposed. It is likely that the people of Danbury will be paying for them instead of the State giving us money to do them. He said he was insulted by the comment about the Plan of Conservation & Development (POCD), what is wrong with trying for the ideal instead of making incremental changes. The proposed land use map in the POCD was done as a guide for the Commission to use when judging rezoning requests. Any development will increase traffic and the City Traffic Engineer discusses this in his report. Regarding the statement that there are nineteen uses in common between these two zones, then why change the zone now. The only reason is to be able to do what they want with this property. After presenting the Commission with a history of rezonings from light industrial to commercial, how can she say she is not sure if this change will lead to more requests for rezoning? Zoning should be based on best use of land; they should use the POCD to determine what it should be. He implored them to not make

incremental changes at this time given the nature of the area. Mrs. Anderson asked if this property is sitting on top of an aquifer. Mr. Elpern said it is but it is served by sewer and water so we are not concerned about that. It is not in the Public Water Supply Watershed area. Chairman Knapp said if you look at the map, you can see that almost everything in the area is already developed. Mr. Elpern said he heard that very same argument when the rezoning was proposed for the Still River Corporate Park, they swore that no one would tear down the Berol building. It is gone now and we are looking at a major commercial development. Chairman Knapp said there has been precedent set. Mr. Elpern said they might as well rezone everything up to Miry Brook and out to Mill Plain Rd. They had thought this was an acceptable line because you do have to draw the line somewhere.

Attorney DeGalan apologized for the interpretation that she was "dissing" the POCD. That was not her intention. She said she was arguing that lines of demarcation may need to be changed sometimes.

Mr. Jowdy made a motion to close the public hearing. The motion was seconded by Mrs. Anderson and passed unanimously.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

- 1) ZBA Referral: Application #05-67 – Sugar Hollow LLC, 88 Sugar Hollow Rd. (#G25007), Use Variance to allow recreational facility/sports training school and indoor field in LCI-40 Zone. *ZBA public hearing was opened on August 25, 2005 and continued pending receipt of this recommendation.*

Since two members of the subcommittee were not present, Mr. Elpern briefly reviewed the application and read the applicant's hardship into the record. There was an extensive discussion of the Zoning Regulations and the applicant's claim that this use is not allowed anywhere in the City. Many of the Commission members also stated that they felt there was a hardship based on that claim. Mrs. Buzaid made a motion to give a positive recommendation, which was seconded by Mr. Farah. The following reason was given for this motion:

- * Since this use falls somewhere between two uses already permitted in this zone (recreational facility and school), it would not be detrimental to the area to allow this use at this site.

and passed unanimously with eight AYES from Mrs. Buzaid, Mr. Haddad, Mr. Johnston, Mr. Jowdy, Mrs. Anderson, Mr. Farah, Ms. Hoffstaetter and Chairman Knapp

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There were seven Cease & Desist Orders listed under the Communications and the For Reference Only listed two public hearings scheduled for September 27, 2005.

At 9:30 PM Mr. Johnston made a motion to adjourn. The motion was seconded by Mr. Jowdy and passed unanimously.